STATE OF MICHIGAN

COURT OF APPEALS

ROBERT L. ANDERSON, JR., LISA A. ANDERSON, 1098 INVESTMENTS, L.L.C., and COOPERSVILLE MOTORS, INC.,	UNPUBLISHED December 15, 2011
Plaintiffs-Appellants,	
v	No. 300459 Ottawa Circuit Court
BUCKMAN, MACDONALD & BAUER, and JEFFREY BUCKMAN,	LC No. 10-001709-CK
Defendants-Appellees.	

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7) with respect to Robert L. Anderson and the corporate plaintiffs finding that res judicata barred their claims, and under MCR 2.116(C)(8), as to plaintiff Lisa Anderson because she lacked standing. We affirm.

Robert, 1098 Investments, and Coopersville Motors were among the named defendants in the 2007 action *Daimler Chrysler v Coopersville Motors, Inc*. Lisa was not a party to that action. Defendants Buckman, MacDonald & Bauer and Jeffrey Buckman represented the named defendants in *Daimler Chrysler*. In 2008, defendants withdrew as counsel and sued Robert, 1098 Investments, Coopersville Motors, and the other *Daimler Chrysler* defendants for unpaid legal fees. [1] In May 2008, the trial court in *Buckman v Anderson* entered a default judgment against Robert, 1098 Investments and Coopersville Motors for failure to appear, ordering them to pay legal fees. The trial court denied the *Buckman v Anderson* defendants' motion to set aside the default judgment in February 2010.

[1] *Buckman, MacDonald & Bauer v Robert L. Anderson, Jr., Jack E. Snyder, Robert J. Bushart, Randall H. Jansma, 1098 Investments, LLC, & Coopersville Motors*, lower court case no. G-08-6676-GC.

Meanwhile, in December 2009, plaintiffs, including Lisa, sued defendants for legal malpractice and unjust enrichment in the instant action. Defendants moved for summary disposition, arguing that plaintiffs' claims were barred by res judicata, waiver, and failure to state a claim, and that Lisa's claims were also barred because she lacked standing. In August 2010, the trial court granted defendants' motion for summary disposition and dismissed plaintiffs' claims with prejudice. The trial court found that Robert, 1098 Investments, and Coopersville Motors' claims were barred under MCR 2.116(C)(7) on the basis of res judicata, and Lisa's claims were barred under MCR 2.116(C)(8) because she lacked standing. The trial court did not address defendants' arguments regarding contractual release or failure to state a claim for unjust enrichment.

On appeal, plaintiffs argue that summary disposition was improper because res judicata did not apply to plaintiffs' action and that Lisa has standing to sue defendants. We disagree.

We review the trial court's grant of summary disposition de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). The application of a legal doctrine like res judicata is a question of law that we also review de novo. *Id*. "When reviewing a motion for summary disposition [under MCR(C)(7)], this Court's review is limited to review of the evidence properly presented to the trial court." *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 380; 775 NW2d 618 (2009). When reviewing a motion for summary disposition under MCR 2.116(C)(8), this Court must focus solely on the pleadings and reasonable inferences that may be drawn from them. *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 378; 521 NW2d 847 (1994). "The motion should be granted only where the claim is so clearly unenforceable that no amount of factual development could justify a right to recovery." *Id*.

A court should grant summary disposition under MCR 2.116(C)(7) where it finds that plaintiffs' claims are barred by the doctrine of res judicata. See *Schwartz v City of Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991). "Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Eaton Co Rd Comm'rs*, 205 Mich App at 375. Res judicata bars a second action "when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Additionally, the first action must have resulted in a final decision. *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006).

Regarding the first requirement for res judicata, "[a] default judgment is treated the same as a litigated judgment for purposes of res judicata and is considered a decision on the merits." *Richards*, 272 Mich App at 531. Plaintiffs argued that the default judgment entered against Robert, 1098 Investments, and Coopersville Motors did not constitute a decision on the merits because it was based on those plaintiffs' failure to appear. But plaintiffs cite no authority to support this position, and this Court's decision in *Richards* is to the contrary.

As to the second requirement for res judicata, we find that plaintiffs' action for malpractice and unjust enrichment could have been resolved in the previous action for unpaid legal fees. This inquiry focuses on "whether the same facts or evidence is essential to the maintenance of the two actions." *Schwartz*, 187 Mich App at 194-195. In this case, the previous

action for unpaid legal fees and plaintiffs' subsequent action for malpractice and unjust enrichment both centered on defendants' performance of legal services related to the *Daimler Chrysler* litigation and depend on the same facts and evidence. Given that plaintiffs' motion to set aside the default judgment in *Buckman v Anderson* stated that defendants were not entitled to legal fees because of defendants' alleged malpractice, plaintiffs could have reasonably brought their action as a counterclaim or affirmative defense in *Buckman v Anderson*. See *Sprague v Buhagiar*, 213 Mich App 310, 313; 539 NW2d 587 (1995); see also *Dart*, 460 Mich at 586 (noting Michigan broadly applies the doctrine of res judicata to bar "every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not"). Accordingly, the second requirement for res judicata was satisfied.

With respect to the third requirement for res judicata, we find that the two actions involve the same parties or their privies. *Dart*, 460 Mich at 586. "[A] privy includes a person so identified in interest with another that he represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 12-13; 672 NW2d 351 (2003). Plaintiffs argue that Lisa was not a privy to the parties in *Buckman v Anderson*. But they also contended that she has standing to join the present action because Lisa was a guarantor of Coopersville Motor's obligations and that defendants' alleged malpractice similarly harmed her; therefore, plaintiffs' own contentions support a finding that she was a privy to the parties in *Buckman v Anderson*. Accordingly, all three requirements for res judicata were satisfied and summary disposition under MCR 2.116(C)(7) was proper as to all plaintiffs.

We also find that the trial court properly dismissed Lisa's claims under MCR 2.116(C)(8) for lack of standing. "In an action against an attorney for negligence or breach of an implied contract, the plaintiff has the burden of proving . . . the existence of the attorney-client relationship . . . ." *Basic Food Indus, Inc v Grant*, 107 Mich App 685, 690; 310 NW2d 26 (1981). An attorney-client relationship "may be implied from conduct of the parties . . . [and] is sufficiently established when it is shown that the advice and assistance of the attorney are sought and received in matters pertinent to his profession." *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Sch*, 455 Mich 1, 11; 564 NW2d 457 (1997).

In this case, Lisa did not have a formal contract with defendants, and she was not a named party in *Daimler Chrysler* or in *Buckman v Anderson*. The pleadings provided no evidence that Lisa ever sought or received legal advice or assistance from defendants, or that defendants ever sought or received payment from Lisa pursuant to any legal representation. Plaintiffs argued that an attorney-client relationship existed between Lisa and defendants because Lisa personally guaranteed Coopersville Motors' financial obligations. But plaintiffs failed to cite any authority to support that such a relationship entitles Lisa to pursue a legal malpractice action. Moreover, a guaranty such as the one alleged does not create an attorney-client relationship. See *American Employers' Ins Co v Med Protective Co*, 165 Mich App 657, 660; 419 NW2d 447 (1988) (finding that an attorney-client relationship did not exist between an attorney and his client's insurer because holding otherwise "would contradict the personal nature of the attorney-client relationship, which permits a legal malpractice action to accrue only to the attorney's client"). Accordingly, Lisa failed to show the requisite attorney-client relationship and her claims are legally insufficient under MCR 2.116(C)(8).

Thus, because the trial court properly granted summary disposition of plaintiffs' claims pursuant to MCR 2.116(C)(7) on the basis of res judicata and pursuant to MCR 2.116(C)(8) as to plaintiff Lisa Anderson because her claims were legally deficient, we need not address defendants' alternate grounds for affirmance.

We affirm. As the prevailing parties, defendants may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello